IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.23516 of 1996

Between:

M/s. VST Industries Ltd.,

Azamabad, Hyderabad,

Represented by its Manager – Personnel

Mr. V.R. Koranne

..... PETITIONER

AND

1. Mr. G. Om Prakash, S/o G.Anjaiah,

17-2-198, Chwni Omnagar,

Yakutpura Post, Hyderabad-500 023.

2. Labour Court No.1, Chandra Vihar,

II Floor, M.J. Road, Hyderabad-500 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ, particularly one in the nature of a Writ of Certiorari and after calling for connected records, quash the Award of the Labour Court-I, Hyderabad dt.21-6-1996 passed in I.D.No.599 of 1993 and pass such further or other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.C.R.SRIDHARAN

Counsel for the Respondent No.1: MR.G.VIDYASAGAR

Counsel for the Respondent No.2: None appeared

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.23516 of 1996

JUDGMENT:

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This writ petition is filed by the Management being aggrieved by the Award dated 21-6-1996 passed in I.D.No.599 of 1993 on the file of Labour Court-I, Hyderabad, wherein the claim petition filed by the respondent-workman was answered in his favour directing the petitioner herein to appoint him afresh as General Worker in the company without back wages, without continuity of service etc.

It is the case of the petitioner-management that it is a Company known as V.S.T. Industries Limited engaged in the business of manufacturing and sale of cigarettes. It has about 1800 workmen. Respondent No.1 joined its company on 7-12-1970 as a General Worker. While he was working in finishing Department, he was charge sheeted for an act of misconduct under the Factory Standing Order 22(2)(d) i.e. theft, fraud or dishonesty in connection with Company's business or property. That on 23-6-1973 at about 3.00 p.m. while the 1st respondent-workman was leaving the factory through the search barrier at the labour gate, he was found by a Watchman on duty to be in wrongful possession of company's property i.e. Four (4) loose Charminar cigarettes. The 1st respondent admitted the charge in the inquiry and he was suspended for a period of one day for the said charge and also warned that repetition of a misconduct of this nature may render him liable to severe penalty.

The 1st respondent-workman was charge sheeted for the second time for a similar misconduct of theft of Company's property under Factory Standing Order 22(2)(d). This time, on 7-7-1992 at about 7.35 a.m. Lance Naik Abdullah Khan found the 1st respondent moving under suspicious circumstances near M.R. Cycle Parking area. Later on, he was escorted to the caperoom and in the presence of the Duty Sergeant J.N. Nageshwara Rao, the 1st respondent himself took out from his pant hip pocket, one packet of Charms Mini Kings 10s Cigarettes, which is the company's

property. Respondent No.1 submitted his explanation dated 18-7-1992 (Ex.W2) wherein he confessed that "I am habituated for smoking. I took one CMK 10s cigarette packet, which was lying on the shop floor and hurriedly proceeded towards the gate office". During the inquiry, the 1st respondent was represented by K.D. Prakash, Secretary of the VST Company Workers Housing Society and he fully participated in the inquiry by cross-examining the Management Witnesses. In the inquiry, the 1st respondent took a peculiar stand that Lance Naik Abdullah Khan himself gave one packet of CMS 10s cigarettes to him and asked to hide it in his pant hip pocket; but on seeing another Watchman, by name, Diwakar Rao approaching the search point, Abdullah Khan foisted a false case against him. Disbelieving the oral evidence of the 1st respondent, which runs contrary to his own explanation under Ex.W2 and accepting the evidence of the Management Witnesses, the Inquiry Officer submitted his report finding the 1st respondent-workman guilty of the charge under Factory Standing Order 22(2)(d). After giving a fair opportunity, finally the 1st respondent was dismissed from service of the Company in view of the evidence in the inquiry as well as his past record, with effect from 24-9-1992. Aggrieved by the same, the 1st respondent raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') in I.D.No.599 of 1993 on the file of the Labour Court-I, Hyderabad.

It was the contention of the workman before the Labour Court that on 7-7-1992 he had placed his vehicle in the parking place at 7.00 a.m. and reported for duty for the first shift. He changed his dress in the section with the factory uniform and thereafter, he received a message from a co-worker that somebody came to meet him at the gate office and while proceeding towards the gate office, he took one CMK 10's cigarette packet, which was lying on the shopfloor without wrapping for his smoking and proceeded towards the gate office. After inquiry, he found that no person was waiting for him and, therefore, he went to toilet room to answer calls of nature. As both the toilet rooms were engaged and as he did not have matches box, he came out of the toilet premises in search of a matches box. Meanwhile, Lance Naik Abdullah Khan asked to escort him to Watchman's room. There, he was directed to take out the cigarette packet from his hip pocket. He explained the reason for waiting near the toilet room. He also stated that he had no intention of going out with the cigarettes on duty dress and that he does not have gate pass to go out of the premises. Without considering the reason given by him, he was asked to handover

the cigarette packet and the same was sealed in the presence of Lance Naik Abdullah Khan and J. Nageshwar Rao, who was the Security Office. Thereafter, he was issued with a charge sheet-cum-show cause notice dated 14-7-1992 and after conducting an inquiry, he was dismissed from service. The management filed a detailed counter affidavit before the Labour Court denying the allegations made by the workman and supporting the order of dismissal. No oral evidence was adduced on either side. But, on behalf of the Management Exs.M1 to M18 were marked and no documents were marked for the workman. After appreciation of the evidence placed before it, the Labour Court came to the conclusion that though the charge is proved and the same is grave in nature, in view of the fact that the workman had put in 22 years of service and the earlier punishment was only a warning against him, the order of dismissal from service was disproportionate to that of the misconduct proved and as such, directed reinstatement of the workman afresh as general worker. Aggrieved by the same, as stated above, the management filed the present writ petition.

Learned counsel for the petitioner-management contended that the Labour Court grossly erred in setting aside the order of dismissal and directing fresh appointment of the workman as general worker on an extraneous and irrelevant consideration as to the length of service of the workman. The Labour Court transgressed the discretionary jurisdiction vested in it by Section 11-A of the Act. The Labour Court failed to note while invoking the powers under Section 11-A of the Act that the present misconduct is a second incident of theft of company's property. The Labour Court having found that the misconduct was established beyond reasonable doubt passed an Award in favour of the workman and directed his fresh appointment. The Labour Court failed to note that the Management has lost confidence in the 1st respondent; therefore, no discretionary power could have been exercised to interfere with the order of dismissal passed by the management. The sum and substance of the contention of the learned counsel is that this is the second time the 1st respondent-workman repeated the same offence of theft of company's property, which is a misconduct under Factory Standing Order 22(2)(d) and further, the management lost confidence in the 1st respondent; therefore, the question of exercising the powers under Section 11-A of the Act in favour of such a person would be nothing but showing misplaced sympathy. The impugned Award of the Labour Court is arbitrary, illegal and liable to be set aside.

Sri G. Vidyasagar, learned counsel appearing for the 1st respondent-workman, supported the Award under challenge and contended that the earlier misconduct was not a theft. That four (4) numbers of loose cigarettes were found in the pocket of the workman and at that time he was warned suitably and let off. Though the Labour Court found that the misconduct was established for the charge under consideration, the workman did not attempt to commit any theft. In fact, he was a victim of a plan hatched by the security personnel.

I have given earnest consideration to the submissions made by both the learned counsel, gone through the Award passed by the Labour Court and also the other material made available on record.

It is an admitted case that the 1st respondent-workman was involved earlier in a similar misconduct of wrongful possession of company's property i.e. four (4) loose Charminar cigarettes and for that he was warned saying that repetition of such misconduct may render him liable to severe penalty. The workman involved for the second time in the same misconduct i.e. theft of company's property, which is a misconduct under Factory Standing Order 22(2)(d) wherein he was found in possession of one packet of Charms Mini Kings 10s cigarettes. The workman under Ex.W2 submitted explanation dated 18-7-1992 stating that he was not going out of the premises of the factory with the cigarettes and he was only waiting near the toilet room, which is close to M.R. Cycle Parking area. The workman denied the charges. The management having not satisfied with the explanation conducted a detailed inquiry into the matter. In the domestic inquiry, in support of the management, the Security Officer – J.N. Nageshwar Rao - and Diwakar Rao, Watchman were examined on behalf of the management and on his behalf, the workman examined himself. It was the contention of the workman that he had not committed any misconduct under Factory Standing Order 22(2)(d) as mentioned in the charge sheet. On considering the evidence placed before it, the Labour Court found as under:

> "……Thus the identity of the worker was fixed as the petitioner in this case. Thereafter, the cigarette packet was wrapped in a paper packet and sealed with gum tape. They all signed on it. Ex.M1 is the sealed packet and he found his signature on that. Ex.M1 a,c and d are the signatures of V S Mohan, Om Prakash and M.W.1 respectively. Therefore, the evidence of M.W.1 has been completely corroborated by the evidence of M.W.2 in all material particulars and in the cross-

> examination of M.W.2 no information useful to the petitioner has been brought out. Mr. Divakar Rao was also examined during the domestic Inquiry and he also corroborated the evidence of M.Ws.1 and 2 on all material particulars. The statement of the petitioner was also recorded during the domestic Inquiry and it is also part of record of Exs.M6 and M7. Ex.M6 is the original and Ex.M7 is the typed copy of Ex.M6. During the domestic Inquiry, the petitioner has changed his version and has come forward with a different theory that Abdullah Khan, Lance Naik called the petitioner and gave one cigarette packet and asked him to put it to his pocket and while he was observing the pocket, he told him to put it in his pocked and concealed it from the notice of others. When the petitioner was putting the packet in his shirt pocket. Abdullah Khan advised him to put the packet in his pant hip pocket, which he did accordingly. When he turned out, he caught hold of from behind…"

The Labour Court also found that the charges levelled against the workman constitute misconduct as per Factory Standing Order 22(2)(d) and proved beyond reasonable doubt. However, in the peculiar facts and circumstances of the case and in view of the fact that the workman had rendered 22 years of service, with one earlier punishment of warning, it is not reasonable and proportionate to dismiss the workman from service for the gravity of the misconduct proved against him. Therefore, directed fresh appointment of the 1st respondent-workman as general worker, which according to the petitioner-management is arbitrary and illegal since the Labour Court invoked the powers under Section 11-A of the Act indiscriminately and without there being any warranting circumstances and as the management has lost confidence in the workman.

Learned counsel for the petitioner relied upon various Judgments to show that the theft is a dishonest intention on the part of the workman and, however, small the property involved may be, the question of reinstating him into service does not arise and the length of service of a workmen is not relevant in the imposition of punishment for proved misconduct.

Regarding the contention that misplaced sympathy cannot be shown to a workman who committed a grave misconduct, the learned counsel for the petitioner relied upon the decision of the Apex Court in **KERALA SOLVENT EXTRACTIONS LIMITED v. A. UNNIKRISHNAN & ANOTHER** in which it was observed as under:

> "**6.** Sri Vaidyanathan, learned senior counsel for the appellant, submitted, in our opinion not without justification, that the Labour Court's reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in administration. He stated that the Management will have no answer to the claims of similarly disqualified candidates, which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and

those who suppressed it stood to gain. He further submitted that this laxity of judicial reasoning will imperceptibly introduce slackness and unpredictability in the legal process and, in the final analysis, corrode legitimacy of the judicial process.

7. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Court must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

In support of the contention that the factum of longer service cannot be a relevant factor for imposition of punishment for proved misconduct, the learned counsel for the petitioner brought to the notice of this Court, a Division Bench Judgment of the Madras High Court in **SRI GOPALAKRISHNA MILLS PVT. LTD. V. LABOUR COURT** in which it was held as under:

"**14.** As regards the fifth reason that the second respondent has put in 8 years of service and he is unmarried, we are definitely of the view that this is not a proper ground for the Labour Court for interfering with the penalty imposed by the management. When a workman is charged for a serious misconduct as an in this case, one cannot go by the number of years of service put in by the workman or by the workman or by his age or by his married or unmarried status. If an unmarried worker is entitled to seek lenience in the matter of punishment as has been held by the Labour Court, a worker who is married and has children to support is equally entitled to claim leniency. This will lead to a situation that all workmen whether married or unmarried can claim leniency. Similarly, the number of years of service also cannot be relevant in the matter of imposition of punishment for proved misconduct. If a worker has put in a longer service, he cannot be taken to be licensed to commit misconduct. If leniency were to be thought of on the lines pointed out by the Labour Court, it will lead to considerable anomalies. The misconduct committed by a worker, who has put in lesser years of service and by another workers who has put in longer years of service are to be treated differently in the matter of punishment with reference to their period of service, it will clearly offend the principle of equality……."

Insofar as the contention that though the amount involved may be small, no lenience can be shown while imposing the punishment, the learned counsel for the petitioner relied upon the Judgments of this Court in **G.R. REDDY v. PRESIDING**

OFFICER, LABOUR COURT, GODAVARIKHANI and **GENERAL MANAGER, ORDNANCE FACTORY PROJECT, YEDUMAILARAM Vs. CENTRAL ADMINISTRATIVE TRIBUNAL.**

In **G.R. REDDY**'s case (3 supra), a Full Bench of this Court held that in cases of misappropriation of public funds, whether the sums so misappropriated are small or large, deterrent punishment is always called for in the interest of administration and what should be the appropriate punishment in the circumstances of each case, should always be left to the discretion of the disciplinary authority, and the High Court while exercising judicial review under Article 226 of the Constitution of India shall not interfere and substitute itself as a court of appeal.

In **GENERAL MANAGER, ORDNANCE FACTORY PROJECT** (4 supra) a Division Bench of this Court held as under:

> "…..Theft or misappropriation even of a small amount may have to be viewed seriously. Nay, in a case of this nature, if the employer takes a strict view, the same cannot be termed to be so irrational so as to attract the principle of Wednesbury unreasonableness. Only in exceptional and rare cases the Court or the Tribunal would interfere with the punishment imposed by the employer and impose appropriate punishment with cogent reasons in support thereof. The learned Tribunal, therefore, was not correct in coming to the conclusion that a compassionate approach can be taken in the matter of quantum of punishment."

Regarding the loss of confidence, the learned counsel for the petitioner placed strong reliance upon the decision of the Supreme Court in **DIVISIONAL CONTROLLER, KSRTC (NWKRTC) v/ A.T. MANE** wherein it was held as follows:

> "**13.** Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith, in such a person and awarding a punishment of dismissal.
>
> **14.** This Court in the case of *B.S. Hullikatti* (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment."

While submitting that the Labour Court did not exercise its discretionary power vested under Section 11A of the Act properly, the learned counsel for the petitioner relied upon an unreported Judgment of the Supreme Court in Civil Appeal Nos.8304-8305 of 2002, dated 25-1-2005, wherein it was held as under:

> "The question the Labour Court ought to have asked itself while exercising its discretion under Section 11 A should have been whether the reasons given by it that there was no earlier misconduct or that the respondent is an active participant in cultural activities is sufficient to come a reasonable conclusion that a punishment of dismissal was harsh in the background of the finding recorded by itself as to the confidence of the employer on the respondent which according to the Labour Court was shaken by the misconduct.
>
> In our opinion with no stretch of imagination either the extenuating circumstances recorded by the Labour Court or the exercise of its discretion could be termed either as reasonable or judicious. In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction under Section 11-A of the Act. It is because of the above erroneous legal foundation as to the vastness of power vested with the Labour Court. The High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the High Court fell in error in granting the relief to the respondent which is challenged in this petition.
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> The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In Air India Corporation (supra) this Court held with reference to loss of confidence as follows :-
>
> "..Once bonafide loss of confidence is affirmed the impugned order must be considered to be immune from challenge.."
>
> In Francis Klein & Company Prviate Ltd. (supra) this Court held :-
>
> " In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement……."
>
> ..Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle

to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person.."

In Janta Bazaar South Kanara (supra) this Court held :-

"Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled…"

"In case of proved misappropriation, in our view, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the empoyer in such cases.."

In UPSRTC (supra) this Court held :-

"The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-`-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment."

With reference to Section 11-A of the Act, in the case of The Workmen of Firestone Tyre & Rubber Company Ltd. (supra) this Court held :-

"Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation."

"If a proper Inquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent

reasons for not accepting the view of the employer"

In CMC Hospital Employees' Union & Anr. (supra) this Court held :-

".. Section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision……."

In our opinion all the above judgments apply with full force to the facts of this case. The Labour Court has itself come to the conclusion the management has lost confidence in the respondent. If that be the case the question of it exercising its jurisdiction under Section 11-A to alter or reduce the punishment does not arise. That apart the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent, no finding has been given by the courts below including Labour Court that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records interference with the award of punishment in a domestic inquiry is impermissible.

For the reasons stated above the appeals succeed. The impugned orders to the extent they direct the reinstatement of the respondent is set aside. The order of dismissal of the respondent made by the appellant pursuant to the inquiry is upheld.

Appeals allowed to the above extent."

Regarding the propensity, the learned counsel for the petitioner brought to the notice of this Court, the decision of a learned single Judge of this Court in **MAHESHWARRAO v. PRESIDING OFFICER** in which it was held as under:

"14. What emerges from those decisions is that the first duty of an

> employee is to be totally honest, faithful, trustworthy towards his employer. Every employee is expected to behave himself so as to not to damage or prejudice the interests or reputation or properties of his employer, whatever be the sphere of the employee. This basic duty is cast on the employee throughout his employment. Acts of embezzlement, fraud, dishonesty, breach of trust, corruption, misappropriation, falsification of accounts and the acts involving moral turpitude are considered to be misconduct of serious nature warranting dismissal or removal from service. When an employee indulges in such misconduct of serious nature, the Courts cannot show sympathy to such employee, and if it shows, it would be a misplaced sympathy and totally against the public interest……
>
> 19. In the context of employment of a conductor in the Corporation and the duties and functions attached to the post of the conductor, the quantum of embezzlement or misappropriation cannot be a relevant consideration. There is absolutely no scope for any conductor to misappropriate the revenues of the Corporation in hundreds or thousands at a time. When a check is exercised on a particular day and at a particular stage, the checking officials may only detect the ticket and cash irregularities committed by the conductor within the few stages preceding the stage at which the check is exercised. Such detection may reveal misappropriation of few rupees only. I can take judicial notice of the fact that in hundreds of cases decided by this Court involving misappropriation of the revenues of the Corporation by its conductors, the money involved was always only few rupees and in most of the cases, it was less than Rs.10/-. Therefore, the quantum of amount misappropriated at a particular stage cannot be a safe and reasonable yardstick to determine the quantum of punishment. What is material and relevant is whether the complained act of a conductor reflects a propensity to be corrupt and dishonest. If the conductor's conduct reflects such objectionable trait, then, it can reasonably be expected that he would translate this propensity to be corrupt into an act whenever and wherever he gets an opportunity to do so and thereby causing heavy loss to the Corporation. It is not that a watchdog or a checking official accompanies every conductor at all times and all places during his service…….If the Industrial Tribunal or this Court is satisfied about the propensity of the delinquent to be corrupt, it cannot be grant relief to him solely on the ground that the misappropriated amount of money is only few rupees, and if they direct reinstatement of such delinquent, it will be totally against public interest and it will also have a demoralizing effect on the administration of the Corporation. It will also aid generation of black money. The Courts, whether it is Industrial Court or this Court, cannot be abettors."

It is true that theft is a serious misconduct. But, in this case, the Labour Court lost sight of the very fact that the workman was found in possession of a cigarette packet near the toilets and at the very first instance, he admitted that since the packet was lying on the ground, he picked up for smoking. It is not the case of the petitioner-management that the workers are not permitted to take cigarettes and smoke in the premises. There is no evidence in this regard on either side. In fact, it is difficult to believe that the workman has committed the theft at all. However, since the same is

not under challenge, there is no necessity to delve on this further.

The fact remains that the charge was only as to attempt to commit theft within the premises of the factory. Even it is the case of the petitioner-management that the workman was found in suspicious circumstances at the toilets and he was taken to the caperoom by the security personnel. It was also not in dispute that he was put on factory uniform and the cigarette packet was found in the hip pocket of his pant and that he had no gate pass to go out of the premises. The facts and circumstances of the case, though there was some evidence, did not inspire the Labour Court to accept the punishment of dismissal from service. Admittedly, the workman rendered 22 years of service and even if the earlier misconduct is taken into consideration, this is definitely not a case requiring the punishment of dismissal from service of the workman. The Labour Court, in fact, exercised its jurisdiction under Section 11-A of the Act properly, since the punishment of dismissal of the workman from service is shockingly disproportionate to the misconduct proved. The Labour Court has explained the circumstances under which it had to exercise the powers under Section 11A of the Act. In the writ jurisdiction under Article 226 of the Constitution of India, it may not be proper on the part of this Court to reverse the Award passed by the Labour Court and uphold the order of dismissal passed by the management for insignificant errors, if any committed. Therefore, all the decisions relied upon by the learned counsel for the petitioner saying that however small the value of the property involved, the only punishment that requires to be imposed on the workman was dismissal from service, since it has lost confidence in him, cannot be applied to this case. The said decisions have no relevance to the facts of this case. The charge was blown out of proportion by the management while imposing the punishment of dismissal from service. However, since the management has expressed that it had lost confidence in the workman, this Court is of the opinion that the Labour Court instead of directing fresh appointment as a general worker, ought to have directed the petitioner-management to retire the workman compulsorily and settle all his dues flowing therefrom.

Sri C.R. Sridharan, learned counsel for the petitioner, at this stage, submitted that there is no provision for retiring a workman compulsorily in the Standing Orders of the petitioner-company. It is not necessary that there should be a provision in the

Standing Orders of the Company. The Labour Court while exercising its power under Section 11A of the Act, can pass an appropriate order molding the relief even beyond the statutory rules, provided the same is not immoral and unconstitutional. It is well settled principle of law that even this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can exercise the very same power under Section 11A of the Act, if it is not properly exercised by the Labour Court.

In the result, the Award passed by the Labour Court is modified to the following effect:

"the order of dismissal dated 24.9.1992 passed by the respondent (management) against the petitioner (workman) is set aside and the respondent is directed to retire the petitioner compulsorily from service with effect from 24-9-1992 and settle all the amounts for which the petitioner is entitled to, within a period of two months from the date of receipt of a copy of this order."

With the above modification of the Award under challenge, the writ petition is dismissed. No order as to costs.

28-4-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Presiding Officer, Labour Court No.1, Chandra Vihar,

II Floor, M.J. Road, Hyderabad-500 001.

2. 2 CD copies.